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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,958	12/11/2003	Richard Keith Snyder	921,000-26	1331
34263 7590 07/31/2007 O'MELVENY & MYERS LLP 610 NEWPORT CENTER DRIVE 17TH FLOOR NEWPORT BEACH, CA 92660			EXAMINER LIM, KRISNA	
			ART UNIT 2153	PAPER NUMBER
			MAIL DATE 07/31/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/734,958

Applicant(s)

SNYDER, RICHARD KEITH

Examiner

Krisna Lim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

1. Claims 1-14 are presented for examination.
2. Claim 8 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear because the claim 8 depends on itself.

3. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chellis et al [U.S. Publication No. 2002/0120744].

5. Chellis discloses (e.g., see Figs. 1-14) the invention substantially as claimed.

Taking claims 1, 7-9 and 14 as exemplary claims, the reference discloses a system and a method for dynamically allocating usage of a shared resource (pools of resource 25, § 11-12 and 18-28) between users A and users B (first consumer and second consumer, etc.) comprising the steps of:

- a) establishing an initial allocation percentage for user B for using the shared resource (e.g., see § 11);
- b) establishing a threshold (capacity, § 18) allocation percentage for user B;
- c) modifying (e.g., substituting/adding/removing, changing, etc.) the allocation

percentage for user B based on the availability of the shared resource to user A (*resource allocation rules/algorithms*), wherein if the shared resource is unavailable to user A, the allocation percentage for user B is decreased and wherein if the shared resource is available to user A the allocation percentage for user B is increased (e.g., see § 11-18); and d) allocating usage of the shared resource to user B in accordance with the modified allocation percentage provided that the modified allocation percentage is less than the threshold allocation percentage (e.g., see § 11-18).

6. Chellis discloses (e.g., see § 10-25) a system and a method for monitoring and managing the usage of resources and for automatically and dynamically allocating such resources to consumers (users) based on the availability of the new resource (e.g., a new server with capacity to handle a number (e.g., 100) of users). And, Chellis discloses the ability to *redefine resource requirement, allocation rules and algorithms to more efficiently (dynamically allocate not over-allocate or under-allocate, emphasis added)* utilize resources. Further Chellis discloses means for manipulating the pool of resources available (e.g., adding/subtracting resources dynamically based on usage), for tracking the resource available and for *defining and managing dependency relationship between applications* (user) (see § 12). Chellis does not explicitly mention as claimed language (e.g., the allocation percentage for user B based on the availability of the shared resource to user A, wherein if the shared resource is unavailable to user A, the allocation percentage for user B is decreased and wherein if the shared resource is available to user A the allocation percentage for user B is increased. It would have been obvious of one of ordinary skill in the art to recognize that such specific claimed language would have been a matter of detail teaching of Chellis' the ability to *redefine resource requirement, allocation rules and algorithms to more efficiently (dynamically allocate not over-allocate or under-allocate, emphasis added)* utilize resources,

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means for manipulating the pool of resources available (e.g., adding/subtracting resources dynamically based on usage), for tracking the resource available and for defining and managing dependency relationship between applications.

7. As to claims 2-4 and 10-12, Chellis further discloses the shared resource is either a call center, computing resources (CPU cycles, disk capacity, etc.), communication bandwidth (e.g., see § 12-14).

8. As to claim 5, Chellis further discloses the threshold allocation percentage is less than 100% (e.g., operating near capacity, § 18).

9. As to claim 6, Chellis further discloses modifying the threshold allocation percentage (e.g., manipulating the pool of resources available, adding/subtracting resources dynamically based on usage, § 12).

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The references are cited in the Form PTO-892 for the applicant's review.

A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisna Lim whose telephone number is 571-272-3956. The examiner can normally be reached on Monday to Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess, can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

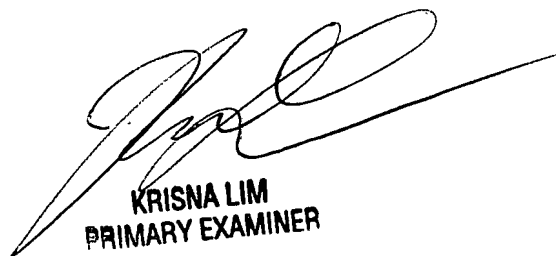
Information regarding the status of an application may be obtained from the

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Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KI

July 18, 2007



**KRISNA LIM**  
**PRIMARY EXAMINER**